* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Writ Petition (C) No. 15089 of 2006

Date of Decision: March 21, 2007

RAM NARAIN ..... Petitioner
Through Mr. Sanjay Ghose, Advocate with
Ms. Pragaya Routray & Mr. Vimal Dubey,
Advocates

versus

THE MANAGMT OF M/S DELHI SCSC ..... Respondent
Through Mr. Ayushya Kumar, Advocate

CORAM:
HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether reporters of Local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

REKHA SHARMA, J.

Ram Narain was employed with M/s Delhi State Civil Supplies Corporation Limited as Assistant Grade III purely on daily wage basis but against a vacant post. He continued as such till 8.11.94 when his services were terminated without assigning any reason. Feeling aggrieved, he raised an Industrial dispute which was referred to the Labour Court for adjudication with the following terms of reference:-

> " Whether the termination of services of Shri Ram Narain is illegal and /or unjustified and if so, to what relief is he entitled and what directions are necessary in this respect?"

The Management raised a preliminary objection before the Labour Court that it was not an industry and consequently Ram Narain was not a workman in terms of Section 2(S) of the Industrial Disputes

Act, 1947. Therefore the Labour Court had no jurisdiction to entertain the reference. On merits, the Management submitted that Ram Narain was employed purely as a casual labour on daily wage. He agreed to his such employment and in token of his acceptance signed on the appointment letter. Hence, as per the terms and conditions, his services were liable to be terminated at any time without assigning any reason.

The Labour Court, vide its Award dated 22.4.2006 decided the preliminary objection in favour of the workman and against the management but on merits, it held, that the workman had not worked continuously for 240 days in the year prior to his termination and therefore in terms of the conditions of his employment his services could be done away with at any time without assigning any reason. As a result, the workman was not granted any relief. Aggrieved by the aforesaid finding the workman has preferred the present writ petition.

The preliminary objection taken before the Labour Court as to the maintainability of the reference is not an issue before me as it was decided in favour of the workman. The Management chose not to question the finding thereon. The only issue which I am called upon to determine is whether the services of the petitioner were illegally and unjustifiably terminated.

It is not in dispute and as a matter of fact, the workman himself has stated in the writ petition and so also before the Labour Court that he was employed by Delhi State Civil Supply Corporation Limited as a daily wager on muster role basis. It is also not in dispute that his appointment letter dated 18.6.93 provided that he was liable to be

terminated without assigning any reason and that he was not entitled to claim any right of seniority or regular appointment on this post or any other equivalent post.

The core issue is whether the workman had worked for 240 days in the year preceding his termination from the service and if so, could his services still be terminated without assigning any reason in terms of the appointment letter or was the Management required to follow the provision of Section 25F of the Industrial Disputes Act, 1947?

The aforesaid section mandates that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until -

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

How the period of 240 days has to be calculated is laid down in Section 25 B of the Act, the relevant part of which reads as under :-

> 25B Definition of continuous service- For the purpose of this Chapter-
>
> (1).....
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> (2)where a workman is not in continuous service within the meaning of clause(1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
> (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
> (i).....
>
> (ii) two hundred and forty days, in any other case;

It should be borne in mind that there is no distinction in industrial law between a permanent employee and a temporary employee. As long as a person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a workman under the Industrial Disputes Act, and will get the benefits of that Act. Therefore, Section 25F read with Section 25B shall come in aid of even those workmen who are employed on muster roll on casual basis and their services can only be terminated by giving them notice as provided in the said sections subject of course to the condition that they have rendered more than 240 days of service in the year prior to the proposed termination. In view of the said mandate of law, the terms of appointment of the petitioner, as per which, his services could be terminated at any time without assigning any reason were inconsequential and could not be pressed into service to contend that no notice was required to be given. What needs to be seen is whether the workman had worked for 240 days? The answer is not far to seek. One has only to look to the statement of the witness of the Management made before the Labour Court. It was Shri R.P.Seghal, the Company Secretary of the Management who appeared and deposed on its behalf. The relevant part of his testimony which is material to determine whether the workman had worked for 240 days is as under :

> It is correct that the workman joined the employment of the management w.e.f.21.6.93 and worked upto 7.11.94 continuously and interruptly(sic) except break given by the management from 17.12.93 to 1.2.94 and one day break on 1.3.94 and one day break on 1.4.94 and four days break between 1.6.94 to 4.6.94..... ..... I have not brought the attendance register in court. The workman has

> worked continuously and interruptly(sic) from 21.6.93 to 7.11.94, except the days of break as mentioned above. It is correct that workman has worked for more than 240 days. No notice or notice pay in lieu of notice was given to the workman or offered. Like wise no service compensation was either offered or paid to the workman..... The job of assistant grade III is still continuing. I cannot tell as to how many assistant grade III are working with the management or what is their respective their date of appointment. Vol. At this point of time I cannot say. It is correct that juniors the workman Shri Ram Narain are working with the management at present also Vol. but they were sponsored by the Employment Exchange. There is no adverse entries about the work and conduct of the workman during his tenure of service. Vol.I have not seen the personal file of the workman. The management does not have any material or document to show that workman is gainfully employed elsewhere after 8.11.94.

In the face of the above testimony of the Management's witness it is not understood as to how the Labour Court has come to the conclusion that the workman had not worked for 240 days in terms of Section 25B of the Industrial Disputes Act. This finding, in the circumstances, is liable to be set aside. Since no notice as required by Section 25F was given to the workman it is held, that his services were illegally terminated.

The workman in his evidence before the Labour Court had made a categorical statement on affidavit that he remained unemployed after his services were terminated. The Management's witness, on the other hand, stated that he was not in possession of any material or document to show that the workman was gainfully employed elsewhere after 8.11.94. In view of this evidence which was before the Labour Court the workman is directed to be reinstated in service with full back wages.

The writ petition stands disposed of.

REKHA SHARMA, J

March 21, 2007
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